IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 620 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATBHAI S. SUTHAR - Petitioner(s)

Versus

LJ SAIYAD JUDGE LABOUR COURT & 2 - Respondent(s)

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Appearance :

MRS SANGEETA N PAHWA for Petitioner No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 1.
MR MB GANDHI for Respondent No(s).: 2.
MRS TRUSHA M GANDHI for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 22/07/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the order dated

07.01.1999 passed by the Labour Court, Ahmedabad, in Misc. Application No.142 of 1997, whereby the said application was allowed and the reference was restored on file.

2.0 The brief facts of the case are that respondent no.2 Company had terminated the services of the petitioner on 01.12.1984. Being aggrieved by the said order, the petitioner raised a dispute, which, ultimately, culminated into a reference. The Labour Court, vide award dated 27.02.1991, directed respondent no.2 Company to reinstate the petitioner workman with full back wages and continuity of service.

2.1 Thereafter, respondent no.2 Company filed Misc. Application No.150 of 1991 praying to restore the Reference. The said application was dismissed by the Labour Court vide order dated 09.09.1993. After the dismissal of the said application, respondent no.2 Company filed another application for review being Review Application No.4 of 1994 in Misc. Application no.150 of 1991 in Ref. (LCA) No.359 of 1986. The said Review Application was also dismissed vide order dated 16.12.1996.

2.2 Thereafter, respondent no.2 again filed another application being Misc. Application No.142 of 1997 praying to restore the original reference being Reference (LCA) No.359 of 1986. The Labour Court vide order dated 07.01.1999 allowed the said application and restored the Reference on file. Hence, this petition.

3.0 Mrs. Pahwa learned advocate for the petitioner has submitted that the reference being Reference (LCA) No.359 of 1986 was disposed of on 27.02.1991. However, a Misc. Application for restoration of the said Reference came to be entertained by respondent no.1 herein on 07.01.1999, i.e after almost eight years from the date when the said Reference was disposed of and that to when it had no jurisdiction to entertain the matter. She has submitted that respondent no.1 herein had no jurisdiction to entertain the said application.

3.2 Mrs. Pahwa has further submitted that respondent no.2 Company had preferred the application being Restoration Application No.150 of 1991 on 06.05.1991 for restoration of the Reference which was dismissed on 09.09.1993. Thereafter, another application for review

being Review Application No.4 of 1994 was preferred on 24.03.1994 which also came to be dismissed on 16.12.1996. Pursuant to the above, respondent no.2 filed another application being Misc. Application No.142 of 1997 for restoration of the original Reference which was preferred six years after the Reference in question was disposed of. By order dated 07.01.1999 passed in the aforesaid application, the original reference being Reference No.359 of 1986 was be restored. Thus, a reference finally decided was being restored after eight long years and that too by a Court having no jurisdiction to entertain the matter. She has, therefore, submitted that the impugned order of the Labour Court is illegal and without any jurisdiction and deserves to be quashed and set aside.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. The Reference in question was decided on 27.02.1991 and respondent no.2 filed the first Restoration Application on 06.05.1991. The said application by itself was time barred. Moreover, when the Labour Court had not stayed the operation of the impugned award, the proceedings on the first restoration application can be said to be void ab initio.

4.1 It is really shocking that when the Labour Court had earlier rejected the Restoration Application on 16.12.1996 on the ground of delay, subsequently, it can not entertain another Application for restoration of the Reference on 07.01.1999. The said action of the Labour Court speaks of volume about the conduct of the concerned Presiding Officer.

4.2 It is well settled that once a review application is already rejected, second review application cannot be entertained. Moreover, in the case on hand, the Labour Court has committed serious error of law in entertaining the third application when the earlier two Applications were already rejected. By entertaining the third Application, the Labour Court has completely traveled beyond its jurisdiction. Thus, in above view of the matter, the impugned order of the Labour Court is illegal, perverse, without any jurisdiction and deserves to be quashed and set aside.

5.0 For the foregoing reasons, this petition is allowed. The impugned order dated 07.01.1999 passed by the Labour Court, Ahmedabad, in Misc. Application No.142 of 1997 is

quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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